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ABSENT VOTER BALLOTS

House Bill 4242 (Substitute H-4) First Analysis (10-17-95)

Sponsor: Rep. Robert Brackenridge
Committee: Local Government

THE APPARENT PROBLEM:

A voter is eligible to vote in an election by absent voter (or absentee) ballot if he or she cannot vote at the polls on election day because of physical disability, religious tenets, confinement to jail awaiting arraignment or trial, duties as an election precinct inspector outside of the precinct of residence, or absence (or the expectation of absence) from the township or city during the entire period the polls are open on election day. Also, anyone 60 years old or older can vote by absentee ballot simply by virtue of age. A registered voter who wants to vote by absentee ballot must fill out an application in advance of election day (by Saturday at 2 p.m.) requesting an absentee ballot and indicate on the application the applicable justification. The application can be made in person or by mail. (An application can be for a primary election only or for both the primary and subsequent general election.) The ballot is then mailed to the voter, although it can be handed over personally.

Currently, the ballot can be returned by mail or in person, or can be delivered to the clerk by a family member or person residing in the same household, or, if such people are not available, by any registered voter. Election officials say the current system is subject to abuse by campaign workers eager to "assist" voters. Without strict limits on who can handle absentee ballots, it is difficult to track their safe return and it is difficult to enforce laws against soliciting the return of absentee ballots, coercion and intimidation in filling out ballots, and tampering. Election officials have recommended stricter control over who can handle an absentee ballot and stiffer penalties for violations as a means of enhancing the integrity of the process.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Election Law's provisions on absent voter balloting in the following ways.

****** It would restrict who can return a ballot to a clerk on behalf of an absent voter. Currently, "any registered elector" can return a ballot for an absent voter (if no family or household member is available). That provision would be eliminated. Under the bill, the only people who could legally be in possession of an absent voter ballot issued to a voter would be: the voter; a member of the voter's immediate family or a person residing in the voter's household who had been asked by the voter to return the ballot; employees of a public postal service or bonded private mail delivery service; and authorized election officials and assistants. Any other person in possession of an absent voter ballot would be guilty of a felony. (It would also be a felony for an unauthorized person to return, solicit to return, or agree to return an absentee ballot to a clerk.)

****** The local clerk would be required to arrange for an absentee ballot to be picked up from an absent voter if no eligible person was available to return it for him or her. The clerk could pick it up personally or send an authorized assistant. A clerk would have to maintain a list open to the public containing the names and addresses of all authorized assistants available to collect absent voter ballots on or before election day in the city or township. The people authorized to pick up ballots would be required to carry credentials issued by the clerk. The written instructions to absent voters would include a statement that if other listed eligible people were not available, the voter could telephone the clerk who issued the ballot and request assistance in returning the ballot. (Those instructions would also contain a revised list of actions that constitute violations of the election law.)

****** It would be a felony for a person assisting an absent voter or present while an absent voter is voting to suggest or in any manner attempt to influence the voter on how he or she should vote.

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It would be a felony (rather than a misdemeanor) for a person assisting an absent voter to knowingly make a false statement on the form to be completed by such a person. It would also be a felony (rather than a misdemeanor as now) to plan or organize a meeting at which absent voter ballots were to be voted. It would remain a misdemeanor for the absent voter to make a false statement on the absent voter ballot form and to participate in a meeting at which an absent voter ballot was voted.

**** Election officials would be required to report to the county prosecutor and secretary of state when they became aware of a person voting or attempting to vote both in person and by absentee ballot.**

**** The statute of limitations would be extended from two to three years after the offense was alleged to have been committed for fraudulent registration and, for other election law offenses, from one to two years after the date of the registration, primary, or election in connection with which the offense was alleged to have been committed.**

**** The bill would specifically state that an absentee ballot could be mailed by a clerk to a post office box rather than the registration address at the request of the absent voter if the post office box was where the voter normally received personal mail and if the voter did not receive mail at his or her registration address.**

**** Currently, a person who requests an absent voter ballot can still vote in person on election day if he or she has not used the ballot to vote. The ballot can be returned and marked "canceled". The bill says that if an absent voter did not receive the ballot or the ballot was lost or destroyed, the voter would have to sign an affidavit to that effect before an election inspector and would then be allowed to vote.**

**** The act contains a provision that makes it a misdemeanor to receive, agree, or contract for "valuable consideration" for "doing, agreeing to do, or having done any campaign work, electioneering, or soliciting of votes for a question or a candidate on or before an election or primary election day." The bill would delete this provision.**

(Note: The election law contains a general felony penalty provision that says a person found guilty of a felony shall, unless otherwise specified, be

punished by a fine not exceeding \$1,000 or by imprisonment for not more than five years, or both. The general misdemeanor penalty in the act is a fine not exceeding \$500, imprisonment in the county jail for not more than 90 days, or both.)

MCL 168.758c et al.

FISCAL IMPLICATIONS:

The Department of State reports that the bill has no fiscal implications for the state. (10-10-95)

ARGUMENTS:

For:

The aim of the bill is to ensure that the absentee voting process has the same integrity of the ballot that exists in the polling place. The bill would restrict who can return an absentee ballot to the local clerk. Currently, any registered voter can, but the bill would limit this to an immediate family member, a member of the voter's household, or specified election officials. (Voters could also mail the ballots back or use a special private carrier service.) Clerks would be required to have absentee ballots picked up by approved personnel if no one was available to return the ballot. This, election officials say, would eliminate the handling of absentee ballots by campaign workers.

State election officials have said that it is common practice in some communities for campaign workers to distribute absentee ballot applications and then return once the ballots arrive to assist voters. The assistance typically includes expressing a willingness to return the ballot. Although it is currently illegal to solicit a voter to return the ballot, this is difficult to enforce. State elections officials say their investigations indicate that many voters, especially older voters, feel an obligation to turn their absentee ballot over to the third party involved. Sometimes there is intimidation of the voter and occasionally ballot tampering. The bill also would make it a felony to make a false statement on the form to be filled out by someone assisting an absentee voter. This should deter abuses.

Against:

Won't some voters, particularly senior citizens, be inconvenienced by this bill? They will no longer, for example, be able to have a trusted neighbor return an absentee ballot. And won't some clerks be inconvenienced if, during the busy election season,

many voters call to have their ballots picked up?

Response:

Voters will be explicitly notified of the correct procedures to follow in returning ballots in the instructions that accompany the ballot. They will be advised, if no other alternative is available, to call the local clerk to have the ballot picked up. Some of the same people and organizations that now collect absentee ballots for return to clerks as a convenience to voters will still be able to do so if they become appointed as assistants to the clerk for that purpose. This approach will provide more accountability and a better audit trail.

Against:

Some concern has been expressed about making illegal possession of an absentee ballot a felony. Particularly of concern is the case where some people not identified in the bill as eligible to possess absentee ballots routinely handle them as part of their job, such as employees who handle mail (in a nursing home or for local government).

Response:

One of the problems that has led to legislation of this kind is the reluctance of prosecutors to take on cases involving violations of the election law. In part, this is due to difficulties in establishing the requisite intent. The concern expressed here is not likely to become a real problem in practice. Any exception intended to deal with this concern should be very carefully and narrowly designed to avoid creating too large an exception.

POSITIONS:

The Department of State supports the bill. (10-11-95)